

WHATCOM COUNTY HEARING EXAMINER

RE: Zoning Conditional Use Permit ) CUP2009-0008  
Application for )  
)  
*Seb Werre, David Taylor, Salim Boulis* ) FINDINGS OF FACT,  
) CONCLUSIONS OF LAW,  
) AND DECISION

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**SUMMARY OF APPLICATION AND DECISION**

Application: The Applicants are requesting a Zoning Conditional Use Permit to operate businesses that include automotive sales and repair, and machinery/farm implement sales and repair to be located at 5499, 5485, 5481, 5469, 5497 and 5463 Guide Meridian Road, Bellingham, Washington.

Decision: The requested Zoning Conditional Use Permit is approved, subject to conditions.

**FINDINGS OF FACT**

**INTRODUCTION**

The following Findings of Fact and Conclusions of Law are based upon consideration of the exhibits admitted and evidence presented at the public hearing.

**I.**

Applicants: Seb Were, David Taylor, and Salim Boulis

Property Address: 5499, 5485, 5481, 5469, 5497 and 5463 Guide Meridian  
Bellingham, WA 98226

Legal Description: SE ¼ of Section 25, Township 39, Range 2E, W.M.

Assessor’s Parcel Numbers: 390225 425209, 390225 494259, 390225 484240,  
390225 479212, 390225 512233, 390225 512247

Zone: Light Industrial Impact

Subarea: Lynden Nooksack

Comprehensive Plan: Transportation Corridors

SEPA Review: SEPA Exempt

Shoreline Designation: N/A

Fire District: #21

School District: Meridian School District # 505

Water: Deer Creek Water Association

Sewage Disposal: On Site Sewage System

Neighboring Uses: North: Light Industrial Impact  
South: Light Industrial Impact  
East: Light Industrial Impact  
West: Light Industrial Impact

AUTHORIZING ORDINANCES AND POLICY:

Whatcom County Comprehensive Land Use Plan  
Whatcom County Code Chapter 15, Building Code  
State Environmental Policy Act (SEPA). Washington Administrative Code Chapter 197-11  
Whatcom County Code Chapter 16.16, Critical Areas  
Whatcom County Code Title 20, Official Whatcom County Zoning Ordinance  
Whatcom County Code Title 24, Health Regulations

Legal Notices: Posted – June 7, 2010  
Mailed – June 4, 2010  
Published – June 10, 2010

Hearing Date: June 23, 2010

Parties of Record:

Seb Werre  
5497 Guide Meridian  
Bellingham, WA 98226

David Taylor  
10511 -230<sup>th</sup> Avenue, Ct. E  
Buckley, WA 98321

Salim Boulos  
PO Box 191  
Everson, WA 98246

Brenda Wilson  
Planning and Development Services

Exhibits:

- 1 Land Use Application
  - 1-1 Supplemental Application
  - 1-2 Deed Info
  - 1-3 Determination of Completeness, dated December 8, 2009
  - 1-4 Form Memo to Staff
  - 1-5 Form Letter to Neighbors
  - 1-6 Application Checklist
  - 1-7 Mailing Labels
- 2 Staff Report, dated June 17, 2010
- 3 Site Plan, color-coded identifying owners and businesses on site
- 4 Agency Comments
- 5 Aerial Photo
- 6 Vicinity Map
- 7 Zoning Map
- 8 Availability Notification for Public Water
- 9 Preliminary Traffic Information
- 10 Revocable Encroachment Permit Application
- 11 Preliminary Stormwater Proposal
- 12 Notice of Application
- 13 Certificate of Mailing of Notice of Public Hearing, dated June 4, 2010
- 14 Certificate of Posting of Notice of Public Hearing, dated June 7, 2010
- 15 Legal Affidavit of Publication of Notice of Public Hearing, dated June 10, 2010

## II.

The Land Use Services Division of Whatcom County Planning and Development Services recommended approval of the requested Zoning Conditional Use Permit, subject to conditions. The Findings of Fact and Conclusions of Law of the Division are set forth in a Staff Report, Exhibit #2, dated June 17, 2010, a copy of which is attached hereto and incorporated herein by this reference.

The Applicant indicated there were no factual inaccuracies in the Staff Report. The Applicant indicated no objection to the Conditions of Approval requested by Staff. There was no public comment on this matter.

## III.

Any Conclusion of Law which is deemed a Finding of Fact is hereby adopted as such. Based on the foregoing Findings of Fact, now are entered the following

### CONCLUSIONS OF LAW

#### I.

The proposed operation of repair and sales businesses, including automotive, machinery/farm implement sales and repair can be approved if they are consistent with the Zoning Conditional Use Criteria of WCC 20.84.220 (2 through 8). Subject to the Conditions of Approval attached to the granting of this permit, the proposal is consistent with the Conditional Use Criteria. A Zoning Conditional Use Permit should be granted, subject to conditions.

#### II.

Any Finding of Fact deemed to be a Conclusion of Law is hereby adopted as such. Based on the foregoing Findings of Fact and Conclusions of Law, now is entered the following

### DECISION

*A Zoning Conditional Use Permit is hereby granted to Seb Werre, David Taylor, and Salim Boulis for the proposed operation of sales and repair businesses consisting of automotive, machinery/farm implement sales and repair businesses to be located at 5499, 5485, 5481, 5469, 5497, and 5463 Guide Meridian, Bellingham, Washington, subject to the following conditions:*

1. The use and location on the site as approved by this permit shall not be amended or changed in any way without further approval of the Hearing Examiner.
2. The Applicant shall comply with the conditions of the Division of Engineering, memorandum, dated February 26, 2010; unless modified by the Division of Engineering or appealed to the appropriate agency.

3. The Applicant shall comply with the conditions of the Whatcom County Plans Examiner, memorandum dated December 17, 2009; unless modified by the Plans Examiner or appealed to the appropriate agency.
4. The Applicant shall comply with the conditions of the Whatcom County Health Department, memorandum, dated April 13, 2010; unless modified by the Health Department or appealed to the appropriate agency.
5. The Applicant shall comply with the conditions of the Whatcom County Fire Marshal's Office memorandum dated January 13, 2010; unless modified by the Fire Marshal's Office or appealed to the appropriate agency.
6. The Applicant shall obtain and complete the requirements for a Commercial Building Permit (Tenant Improvement for the change in use) and any Land Disturbance Permits that may be required.
7. The Applicant shall provide a final parking plan which meets the requirements of WCC20.80.500, at the time of Building Permit Application.
8. The Applicant shall provide a landscape plan at the time of Building Permit Application, which meets the requirements of WCC20.80.300.
9. Any lights used to illuminate the parking lot shall be so arranged as to direct the light away from the adjoining property and the public road.
10. All trash and/or garbage collection and storage areas must be screened from view from adjacent streets and properties using a solid fence or wall a minimum of six feet high.
11. Should archaeological materials (e.g. shell midden, faunal remains, stone tools) or human remains be observed during project activities, all work in the immediate vicinity shall stop, and the area shall be secured. The State Office of Archaeology and Historic Preservation (360-586-3065) and the Lummi Nation Tribal Historic Preservation Office (360-384-2298) shall be contacted immediately in order to help assess the situation and determine how to preserve the resource(s). Compliance with all applicable laws pertaining to archaeological resources is required.
12. The Applicant shall complete construction or, if no construction is contemplated as a part of this permit, shall demonstrate compliance with all of the conditions of this permit within 24 (twenty-four) months of the date of the issuance of this decision. Failure to complete construction or demonstrate compliance shall result in the expiration of this permit. Substantial progress toward completion may satisfy the terms of this condition if approved by

Whatcom County Planning & Development Services and the Hearing Examiner. The applicant or permit holder may apply for an extension for a term of up to one year upon a showing that substantial progress has been made toward completion or compliance. An extension shall be granted if the Hearing Examiner finds that the applicant or permit holder will suffer a substantial hardship if the extension is denied. The Hearing Examiner may grant an extension for any other good cause shown, in his discretion, but extraordinary circumstances must be shown to obtain an extension of more than one year. The Hearing Examiner shall obtain the comments of Whatcom County Planning & Development Services before granting any extension.

#### NOTICE

This approval is subject to all of the above-stated conditions. Failure to comply with them may be cause for its revocation. Complaints regarding a violation of the conditions of this permit should be filed with Whatcom County Planning and Development Services. The Hearing Examiner may not take any action to revoke this approval without further public hearing. Violations of this title shall constitute Class I civil infractions pursuant to RCW 7.80.120. The maximum penalty and the default amount for such violations shall be consistent with Chapter 7.80.RCW.

#### NOTICE OF APPEAL PROCEDURES FROM FINAL DECISIONS OF THE WHATCOM COUNTY HEARING EXAMINER

This action of the Hearing Examiner is final. The following review procedure is available from this decision and may be taken by the applicant, any party of record, or any County department.

Appeal to County Council. Within ten business days of the date of the decision a written notice of appeal may be filed with, and all required filing fees paid to, the Whatcom County Council, Courthouse - 1st Floor, 311 Grand Avenue, Bellingham, WA 98225. The appeal notice must state either:

- 1) The specific error of law which is alleged, or
- 2) How the decision is clearly erroneous on the entire record.

More detailed information about appeal procedures is contained in the Official Zoning Ordinance at Section 20.92.600-.830. A copy of this document is available for review at the County Council Office. After an appeal has been filed and the Council office has received the hearing record and transcript of the public hearing, the parties will be notified of the time and date to file written arguments.

DATED this 25<sup>th</sup> day of June 2010.

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Michael Bobbink, Hearing Examiner

June 17, 2010

WHATCOM COUNTY PLANNING AND DEVELOPMENT SERVICES

STAFF REPORT

The application of **Seb Werre,** | **CUP2009-00008**  
**David Taylor and Salim Boulis** | FINDINGS, CONCLUSIONS  
For a Zoning Conditional Use Permit | AND RECOMMENDATIONS

**I. SUMMARY OF APPLICATION AND RECOMMENDATIONS**

Application: The applicant is requesting a zoning conditional use permit in order to operate automotive sales and repair and machinery/farm implement sales and repair businesses located at 5499, 5485, 5481, 5469, 5497 and 5463 Guide Meridian Road, Bellingham, Washington.

Recommendation: Staff recommends approval of the request, subject to the attached conditions.

**II. PRELIMINARY INFORMATION**

Applicant: Seb Were, David Taylor and Salim Boulis

Applicant's Representative: N/A

Property Address: 5499, 5485, 5481, 5469, 5497 and 5463 Guide Meridian Rd.  
Bellingham, WA. 98226.

Legal Description: SE ¼ of Section 25, Township 39, Range 2,E., W.M.

Assessor's Parcel Numbers: 390225425209, 390225494259, 390225484240,  
390225479212, 390225512233, 390225512247.

Zone: Light industrial Impact

Subarea: Lynden Nooksack

Comprehensive Plan: Transportation Corridors

SEPA Review: SEPA Exempt

Shoreline Designation: N/A

Fire District: #21

School District: Meridian School District # 505

Water : Deer Creek Water Association

Sewage Disposal: On Site Sewage System

Neighboring uses: North: Light Industrial Impact  
South: Light Industrial Impact  
East: Light Industrial Impact  
West: Light Industrial Impact

**AUTHORIZING ORDINANCES AND POLICY:**

1. Whatcom County Comprehensive Land Use Plan.
2. Whatcom County Code Chapter 15, Building Code
3. State Environmental Policy Act (SEPA). Washington Administrative Code Chapter 197-11
4. Whatcom County Code Chapter 16.16, Critical Areas
5. Whatcom County Code Title 20, Official Whatcom County Zoning Ordinance
6. Whatcom County Code Title 24, Health Regulations

**III. FINDINGS**

In order for the Conditional Use permit to be approved, the proposal must satisfy the criteria of WCC 20.84.220 (1 through 8). In summary, these criteria state that the proposal must: be harmonious and in accordance with the general and specific goals and policies of Whatcom County's Comprehensive Plan and zoning regulations, be designed, constructed, operated, and maintained so as to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity, and that such use will not change the essential character of the same area, will not be hazardous or disturbing to existing or future neighboring uses, be serviced adequately by essential public facilities such as highways, streets, police and fire protection, drainage structures, refuse disposal, water and sewers, and schools; or that the persons or agencies responsible for the establishment of the proposed use shall be able to provide adequately any such services, not create excessive additional requirements at public cost for public facilities and services, and will not be detrimental to the economic welfare of the community, not involve uses, activities, processes, materials, equipment and property, or the general welfare by reasons of excessive production of traffic, noise, smoke, fumes, glare or odors, have vehicular approaches to the property which shall be so designed as not to create an interference with traffic on surrounding public streets, and not result in destruction, loss or damage of any natural, scenic or historic feature of major importance.

**Applicable Codes and Policies:**



Automotive Sales and Repair Businesses are allowed as a conditional use in the Light Industrial Zone District under WCC20.66.153.

The Whatcom County Comprehensive Plan: The proposed conditional use is in accordance with the objectives of Whatcom County's Comprehensive Plan. For example, the Introduction section of Chapter Seven "*Economics*" states: *Purpose*:

1. Maintenance of a strong sustainable economic base.

Also, Chapter Seven states in part...Economic vitality can also be described as private capital investment. The proposed Automotive Repair and Sales businesses contribute to the maintenance of a strong economic base and economic vitality through private capital investment.

In addition, the following goal and policies within Chapter Seven "*Economics*" support the proposed conditional use:

GOAL 7A: Promote a healthy economy which provides ample opportunity for family-wage jobs for diverse segments of the community which is essential to the quality of life in the area.

Policy 7A-1: Together with the cities, provide an ample, developable land supply for commercial and industrial uses to provide opportunity for new and expanding firms wishing to locate or remain in Whatcom County.

WCC20.84.220(1) through (8) sets forth the criteria that must be satisfied in order for the request for a conditional use permit is granted.

If applicable, conditions are established in order to ensure the criteria are satisfied and potential impacts are mitigated. These conditions are set forth in the Conditions of Approval Section of this report.

### **Zoning Review:**

Building Setbacks: Existing Structures

Lot Coverage: Existing Structures

Building Height: Existing Structures

Landscaping: Landscaping shall be installed pursuant to WCC20.80.300. Prior to the issuance of a building permit a scaled landscape site plan shall be submitted to and approved by planning and development services.

Parking: Parking shall be installed pursuant to WCC20.80.580. Pursuant to WCC 20.80.580(6), two spaces for each service bay for the repair of automobiles are required.

Lighting: Pursuant to WCC20.80.523; any lights used to illuminate a parking lot shall be so arranged as to direct the light away from the adjoining property and the public road.

Trash and storage areas: Pursuant to WCC20.80.355; all trash and/or garbage collection and storage areas must be screened from view from adjacent streets and properties using a solid fence or wall a minimum of six feet high.

Signage: The application did not include a request for signage.

WCC20.66.153(1) and (2) states: (Conditional Use Permit Requirements for:

**.153** Repair, service and accessory sales for motor vehicles, boats and farm implements provided:

(1) The use or uses are not expected to generate significantly more traffic than that which would ordinarily be expected by an industrial use of comparable intensity:

**Response:** The proposed uses are currently in effect and Whatcom County Engineering Services determined that the proposed development is exempt from Concurrency Evaluation (WCC20.78.030) because it will generate 9 or less new p.m. peak hr. trips in one direction, based on submitted Preliminary Traffic & Concurrency Information.

(2) It can be established that sufficient undeveloped, usable property zoned LII is available for the outright permitted uses within the planning subarea for the projected life of the plan as determined by the planning department. Applicant will be responsible for furnishing necessary information.

**Response:** The subject parcel is located in the Lynden Nooksack planning subarea. A review of the Whatcom County Title 20 Zoning & Comprehensive Plan Designations Map dated December 21, 2009 depicts LII zone designations directly east of the subject parcel. A review of the developable area within that designation indicates that sufficient undeveloped, usable property is available for the outright permitted uses. In addition, there is ample undeveloped, usable property zoned LII within one and a half to two miles southwest of the subject property within the Urban Fringe planning subarea.

**Conditional Use Criteria (WCC 20.84.220):**

Before approving an application for a conditional use permit, the hearing examiner shall ensure that any specific standards of the use districts defining the conditional use are fulfilled, and shall find adequate evidence showing that the proposed conditional use at the proposed location:

**(1)** Will be harmonious and in accordance with the general and specific objectives of Whatcom County's Comprehensive Plan and zoning regulations.

**Discussion:**

Automotive Sales and Repair Businesses are allowed as a conditional use in the Light Industrial Zone District under WCC20.66.153.

The Whatcom County Comprehensive Plan: The proposed conditional use is in accordance with the objectives of Whatcom County's Comprehensive Plan. For example, the Introduction section of Chapter Seven "*Economics*" states: *Purpose*:

1. Maintenance of a strong sustainable economic base.

Also, Chapter Seven states in part...Economic vitality can also be described as private capital investment. The proposed Automotive Repair and Sales businesses contribute to the maintenance of a strong economic base and economic vitality through private capital investment.

In addition, the following goal and policies within Chapter Seven "*Economics*" support the proposed conditional use:

GOAL 7A: Promote a healthy economy which provides ample opportunity for family-wage jobs for diverse segments of the community which is essential to the quality of life in the area.

Policy 7A-1: Together with the cities, provide an ample, developable land supply for commercial and industrial uses to provide opportunity for new and expanding firms wishing to locate or remain in Whatcom County.

The conditions set forth in the "Conditions of Approval" section of this report establish compliance, harmony and accordance with the Whatcom County Zoning Ordinance via the parking, landscaping, screening and buffering provisions set forth in the code. Compliance with these requirements will provide compatibility with existing surrounding land uses; thereby establishing harmony and accordance with the general and specific objectives of the Whatcom County Zoning Ordinance and the conditional use at the proposed location.

**(2)** Will be designed, constructed, operated, and maintained so as to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity, and that such use will not change the essential character of the same area?

**Discussion:**

**Design and construction:** Existing Structures

**Operation and maintenance:** The owners will provide regular maintenance in order to maintain the essential character of the area. Landscaping conditions to ensure compatibility with the existing and intended character of the general vicinity are established in the Conditions section of this report.

**Essential character:** The proposed Automobile Sales and Repair businesses will not change the essential character of the area. Landscaping and lighting conditions are established in the Conditions section of this report.

**(3)** Will not be hazardous or disturbing to existing or future neighboring uses?

**Discussion:**

The proposed use is not hazardous or disturbing to existing or future uses. The property is zoned LII and is located along a State Highway with similar surrounding uses.

**(4)** Will be serviced adequately by necessary public facilities such as highways, streets, police and fire protection, drainage structures, refuse disposal, water and sewers, and schools; or that the persons or agencies responsible for the establishment of the proposed use shall be able to provide adequately any such services?

**Discussion:**

The site is serviced adequately by necessary public facilities. Police protection is provided by the Whatcom County Sheriff's Office. Fire protection is provided by Fire District #21. Refuse disposal is provided by the private sector. Potable water is provided by the Deer Creek Water Association and the Whatcom County Health Department has required an approved on-site sewage permit if water is to be run to any new building.

**(5)** Will not create excessive additional requirements at public cost for public facilities and services, and will not be detrimental to the economic welfare of the community?

**Discussion:**

The proposed improvements will not create excessive additional requirements at public cost. The costs of the proposed improvements will be borne by the property owners and will be a benefit to the economic welfare of the community as a result of private investment.

**(6)** Will not involve uses, activities, processes, materials, equipment and conditions of operation that will be detrimental to any persons, property, or the general welfare by reasons of excessive production of traffic, noise, smoke, fumes, glare or odors?

**Discussion:**

The activities associated with the proposed development will involve normal long term uses however will not be detrimental to persons, property, or the general welfare due to the conditions placed on the proposed use of the property which will serve to mitigate potential impact. Building lights will be placed to avoid the glare produced by such lights. Traffic, noise and glare impacts will be mitigated by the imposition of conditions on the use of the land for the new facility.

**(7)** Will have vehicular approaches to the property which shall be so designed as not to create an interference with traffic on surrounding public streets?

**Discussion:**

WSDOT has expressed no concern with the access point to these parcels at this time.

**(8)** Will not result in the destruction, loss or damage of any natural, scenic or historic feature of major importance?

**Discussion:**

The proposed project will not result in the destruction, loss or damage of natural, scenic or historic feature of major importance.

**IV. PUBLIC NOTICE AND COMMENT**

Requirements for public notice are contained in WCC 2.33.

Notice of Application: The Notice of Application for this proposal was published on December 11, 2009. Notice was also mailed to property owners within 1000 feet of the site.

- Public Input: During the public comment period for the Notice of Application, the County did not receive any public comment.

Notice of Public Hearing: The Notice of Public Hearing for this project was posted on the site. The notice was included in a one-time newspaper publication.

**V. STATE ENVIRONMENTAL POLICY ACT (SEPA)**

The Whatcom County SEPA Official has determined the application is exempt from SEPA review.

**VI. AGENCY COMMENTS**

**Traffic, Drainage, and other Engineering Comments**

Sanja Barisic of Whatcom County Public Works Department, Engineering Services provided comment on February 26, 2010. See attached memo for entry into the Hearing Examiner File as an exhibit and condition of approval.

**Safety and Fire Comments**

Police and fire protection for the site is provided by the Whatcom County Sheriff's Office and Fire District #7. No comments or concerns regarding this proposal were received from either agency.

Bill Hewett, Fire Inspector of the Whatcom County Fire Marshal's Office provided comment on January 13, 2010. See attached memo for entry into the Hearing Examiner File as an exhibit and condition of approval.

### **Health Department Comments**

Charles Sullivan, Environmental Health Specialist for the Whatcom County Health Department provided comment on April 13, 2010. See attached memo for entry into the Hearing Examiner File as an exhibit and condition of approval.

### **Building Services Comments**

Curtis Metz, Whatcom County Plans Examiner provided comment on December 17 2009. See attached memo for entry into the Hearing Examiner File as an exhibit and condition of approval.

### **Critical Areas Comments**

Lyn Morgan-Hill, Senior Planner, Natural Resources provided comment on February 2, 2010. See attached memo for entry into the Hearing Examiner File as an exhibit.

## **VII. RECOMMENDATION**

Planning and Development Services recommends approval of the Zoning Conditional Use Permit application subject to the following conditions:

## **VIII. CONDITIONS OF APPROVAL**

- 1) The use and location on the site shall not be modified or changed in any way without further approval of the Whatcom County Hearing Examiner.
- 2) The applicant shall comply with the attached conditions of the Division of Engineering's memo dated February 26, 2010; unless modified by the Division of Engineering or appealed to the appropriate agency.
- 3) The applicant shall comply with the conditions of the attached Whatcom County Plans Examiner's memo dated December 17, 2009; unless modified by the Plans Examiner or appealed to the appropriate agency.
- 4) The applicant shall comply with the attached conditions of the Whatcom County Health Department memo dated April 13, 2010; unless modified by the Health Department or appealed to the appropriate agency.
- 5) The applicant shall comply with the attached conditions of the Whatcom County Fire Marshal's Office memo dated January 13, 2010; unless modified by the Fire Marshal's Office or appealed to the appropriate agency.

- 6) The applicant shall obtain and complete the requirements for a commercial building Permit (Tenant Improvement for the change in use) and any Land Disturbance Permits that may be required.
- 7) The applicant shall provide a final parking plan which meets the requirements of WCC20.80.500 at the time of building permit application.
- 8) The applicant shall provide a landscape plan at the time of building permit application which meets the requirements of WCC20.80.300.
- 9) Any lights used to illuminate the parking lot shall be so arranged as to direct the light away from the adjoining property and the public road.
- 10) All trash and/or garbage collection and storage areas must be screened from view from adjacent streets and properties using a solid fence or wall a minimum of six feet high.
- 11) Should archaeological materials (e.g. shell midden, faunal remains, stone tools) or human remains be observed during project activities, all work in the immediate vicinity shall stop, and the area shall be secured. The State Office of Archaeology and Historic Preservation (360-586-3065) and the Lummi Nation Tribal Historic Preservation Office (360-384-2298) shall be contacted immediately in order to help assess the situation and determine how to preserve the resource(s). Compliance with all applicable laws pertaining to archaeological resources is required.

Report prepared in coordination with the Technical Review Committee by:  
Brenda Wilson  
Senior Planner